RECENT IMPORTANT DECISIONS

ADOPTION—WHO IS A "CHILD."—Plaintiffs are heirs at law of F., deceased intestate. Defendant is the grantee of one not a natural heir at law of intestate, but who was adopted by the said F., being at the time of his adoption twenty-six years of age. In an action of ejectment, *held,* that the section of the code providing for the adoption of children, uses the word "child" in the sense of relationship and not of infancy; hence one twenty-six years of age is subject to adoption. *Sheffield et al.* v. *Franklin* (1907), — Ala. —, 44 So. Rep. 373.

The right to adopt children has been conferred entirely by statute, and the question as to the meaning of the word "child" has been raised in those states only whose statutes fixed no limit to the age at which heirs could be adopted. The principal case accords with the weight of modern decisions. *Markover* v. *Krauss,* 132 Ind. 297, 31 N. E. 1047, 17 L. R. A. 806, holds that the word "child" includes one having passed his majority, because a child does not cease to be one's child after it has attained its majority. Other cases in point are *In re Estate of Moran,* 151 Mo. 555, 52 S. W. 377; *Collamore* v. *Learned,* 171 Mass. 99, 50 N. E. 518; *Abney* v. *Deloach Adm'r, et al.,* 84 Ala. 399, 4 So. Rep. 757. A few courts, however, place a different construction on the word "child" in statutes of this nature. *Anon,* 1 Wkly. Notes. Cas. 576 (Pa.), holds that courts have no authority to decree adoption where the person sought to be adopted is over twenty-one. The word has been construed as meaning minor child in *Williams* v. *Knight,* 18 R. I. 333, 27 Atl. 210; *In re Moore,* 14 R. I. 38. In the principal case three justices dissent on the ground that "the word 'child' can be and should be held to mean infant—a person under twenty-one years of age."

AGENCY—RATIFICATION—ACT MUST HAVE BEEN DONE AS AGENT—TRUSTS—PRETENDED AGENT AS CONSTRUCTIVE TRUSTEE.—Complainant was the owner of a large tract of coal land. As to two parcels of this land the title was defective owing to irregularities in conveyances. Defendant went to the persons in whom the legal title thus remained, falsely representing himself to be complainant's agent, and obtained from them a conveyance *in his own name,* paying therefor with his own money, and really intending to purchase on his own account. Complainant brings action to compel defendant to convey to it, either on the ground that he was an agent for complainant whose act complainant could and did ratify, or that he was a trustee *ex maleficio* for complainant. *Held,* that complainant may recover on the second ground but not on the first. *Virginia Pocahontas Coal Co.* v. *Lambert* (1907), — Va. —, 58 S. E. Rep. 561.

The reason assigned for the decision against ratification was that there can be no ratification unless the person who did the act purported at the time to act *as agent* for the person who seeks to ratify. Upon this point an interesting question might be made as to what is meant by acting *as agent,* but if we accept the court's conclusion the decision is in accord with the clear

weight of authority, although the court does not appear to have had its attention drawn to the recent cases either for or against the position taken. An elaborate discussion of the question appears in 2 MICHIGAN LAW REVIEW, 35, under the heading *Ratification by an Undisclosed Principal,* in which the recent cases are considered. See also 1 MICHIGAN LAW REVIEW, 140, 319. But this case is obviously not the ordinary one of ratification as between the principal and third persons. It is a question of ratification by the principal as against his agent. The question is this: Where a person without authority, but declaring that he acts for a principal, takes a deed of land *in his own name* and pays with his own money, may the declared principal by ratification make that a purchase on his own account? It will not avail him to ratify the act as done. In order to succeed, he must (1) by ratification approve the assumption of the other to act as his agent, and thus establish agency, and then (2) assert that taking title in the agent's own name was a breach of duty, for which he may be made to account by transferring the title to the principal. There will ordinarily be difficulty in doing this in view of the Statute of Frauds, unless a resulting or constructive trust can be established. Upon the second point, the court found that the conveyance was made to defendant because he claimed to be the complainant's agent, and the grantors believed that they were thereby curing defects in a title previously conveyed by them. This was held sufficient to charge him as a trustee, *Rollins* v. *Mitchell,* 52 Minn. 41, 53 N. W. 1020, 38 Am. St. Rep. 519, and *Harold* v. *Bacon,* 36 Mich. 1, being cited and relied upon. See also *Roller* v. *Spilmore,* 13 Wis. 26; *Conant* v. *Riseborough,* 139 Ill. 383. But compare *Garvey* v. *Jervis,* 46 N. Y. 310, 7 Am. Rep. 335.

BANKRUPTCY—ASSETS—COMMISSIONS OF AGENT ON POLICIES WRITTEN PRIOR TO ADJUDICATION.—W., now a bankrupt, had been agent for a life insurance company. The contract provided for the payment to him of a commission upon first-year and renewal premiums received by the company on policies procured by him. The commissions were to accrue only as the premiums were paid to the company in cash. *Held,* that W.'s commissions on renewal premiums on policies written prior to his adjudication as a bankrupt, but unaccrued at that time, pass to his trustee under section 70a of the Bankruptcy Act (Act July 1, 1898, c. 541, 36 Stat. 565, U. S. Comp. St. 1901, p. 3451), as property which he might have transferred without the consent of the company. *In re Wright* (1907), — D. C., W. D., N. Y. —, 151 Fed. Rep. 361, 18 Am. B. R. 198.

A distinction is to be noted here between the assignment of a contract involving personal trust and confidence, and the assignment of benefits to be derived from what has been done under that contract, a distinction which apparently escaped the referee. *Hackett* v. *Campbell,* 10 App. Div. 523. *Fortunato* v. *Patten,* 147 N. Y. 277. This case presents a situation easy in theory, but difficult of application. The contract under which these commissions are to accrue extends over a period of ten years. If these contingent premiums are held to be property which will pass to the assignee, we are met with the practical difficulty of collecting them as they fall due year after year, and